

U.S. PTO Customer No. 25280

Case# 5668

REMARKS35 USC Section 103 Rejections:

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent Application Publication No. 20040137814A1).

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent No. 6,899, 923).

Claims 7, 24-25 and 29-34 were rejected under 35 USC 103(a) as being unpatentable over Kimbrell Jr. et al. (US Patent Application Publication No. 20040138083A1).

The Examiner states that these rejections may be overcome by showing that the references are disqualified under 35 USC Section 103 (c) as prior art in a rejection under 35 USC Section 103(a) as described in MPEP Section 706.02 (I) (1) and (I)(2).

Citing 35 USC Section 103(c), Applicant respectfully submits that the Kimbrell references are improperly used in forming the basis for these rejections. 35 USC Section 103(c) states:

"Patentability shall not be negated by the manner in which the invention was made. Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

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Applicant respectfully states that all of the Kimbrell references cited herein and the instant patent application were, at the time the invention was made, subject to an obligation of assignment to Milliken & Company. Additionally, Applicant respectfully states that the Kimbrell references qualify as prior art only under 35 USC Section 102(e).

Accordingly, Applicant respectfully submits that the rejections over the Kimbrell references are improper since they were subject to assignment to Milliken & Company at the time the invention was made. Thus, Applicant respectfully requests that the 35 USC Section 103(a) rejections over the Kimbrell references be withdrawn.

Double Patenting Rejections:

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-15 of copending Application No. 10/339,971.

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 10/340,300.

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of copending Application No. 10/685,318.

Claims 7, 24-25 and 29-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of USPN 6,899,923.

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Applicant respectfully disagrees with the basis of these double patenting rejections. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP § 2143.03).

Applicant respectfully submits that the cited references fail to teach or suggest all of the claim limitations of Applicant's invention as required. More specifically, the references fail to teach or suggest a hydrophilic polyurethane resin as taught and claimed by Applicant as component "b" recited in independent claim 7. The presently claimed composition is comprised of four (4) components – 2 fluorine containing components, a hydrophilic polyurethane resin, and a crosslinking component. None of the cited references disclose the inclusion of a hydrophilic polyurethane resin.

Claims 11 and 12 of copending Application No. 10/339,971 are directed to fabric substrates having a hydrophilic stain release agent, a hydrophobic stain repellent agent and a hydrophobic crosslinking agent applied thereto (claims 13 – 15 were cancelled). The hydrophilic stain release agents taught by this copending application include ethoxylated polyesters, sulfonated polyesters, ethoxylated nylons, carboxylated acrylics, cellulose ethers or esters, hydrolyzed polymaleic anhydride polymers, polyvinylalcohol polymers, polyacrylamide polymers, hydrophilic fluorinated stain release polymers, ethoxylated silicone polymers, polyoxyethylene polymers, polyoxyethylene-polyoxypropylene copolymers, and the like, or combinations thereof. Hydrophilic fluorinated stain release polymers may be preferred stain release agents. There is no specific teaching or suggestion of a hydrophilic polyurethane resin.

Claims 1-29 of copending Application 10/340,300 were cancelled by amendment, thus rendering this rejection moot. New claims 30-69 of this copending Application are directed to compositions comprising a fluorine-containing stain release agent, a fluorine-containing stain repellent agent, and

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a hydrophobic crosslinking agent. There is no specific teaching or suggestion of a hydrophilic polyurethane resin contained therein.

Claims 1-35 of copending Application Serial No. 10/685,318 are directed to treated textiles having a fluorochemical-containing soil release component, an antimicrobial agent, and either a hydrophobic crosslinking component or a fluorochemical-containing repellent component. There is no specific teaching or suggestion of a hydrophilic polyurethane resin contained therein.

Claims 1-14 of USPN 6,899,923 are directed to a method for imparting durable repellency and stain release to a substrate by coating the substrate with a composition comprised of a hydrophilic stain release agent, a hydrophobic stain repellent agent and a hydrophobic crosslinking agent. The hydrophilic stain release agents taught by this patent include ethoxylated polyesters, sulfonated polyesters, ethoxylated nylons, carboxylated acrylics, cellulose ethers or esters, hydrolyzed polymaleic anhydride polymers, polyvinylalcohol polymers, polyacrylamide polymers, hydrophilic fluorinated stain release polymers, ethoxylated silicone polymers, polyoxyethylene polymers, polyoxyethylene-polyoxypropylene copolymers, and the like, or combinations thereof. Hydrophilic fluorinated stain release polymers may be preferred stain release agents. There is no specific teaching or suggestion of a hydrophilic polyurethane resin contained therein.

Accordingly, Applicant respectfully submits that the claims of the present invention are not obvious variations over the teachings of copending Application Serial Nos. 10/339,971; 10/340,300; and 10/685,318 and USPN 6,899,923, since each reference fails to teach or suggest a hydrophilic polyurethane resin as recited by Applicant's in independent claim 7. Thus, since all other rejected claims depend either directly or indirectly from claim 7, Applicant respectfully submits that the double patenting rejections of claims 7, 24 – 25 and 29 – 34 are improper. Reconsideration and withdrawal of these rejections is earnestly requested.

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Conclusion:


For the reasons set forth above, it is respectfully submitted that claims 7, 24 – 25, and 29 – 34 stand in condition for allowance. Should any issues remain after consideration of these Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

Respectfully requested,

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